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January 16, 2002

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177709

VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED

Administrator, Research and Special Programs Administration
U.S. Department of Transportation
400 7th Street, S.W.
Washington, D.C. 20590-0001

Associate Administrator for Hazardous Materials Safety
U.S. Department of Transportation
400 7th Street, S.W.
Washington, D.C. 20590-0001

PETITION TO AMEND A SUBSTANTIVE REGULATION

This is a petition to amend a substantive regulation under § 106.31 of Title 49, Subtitle B, Chapter I of the Code of Federal Regulations. The petition is brought by the Flexible Intermediate Bulk Container Association, through its undersigned counsel.

I. Section 106.31(b) Criteria

1. Summary of Proposed Action and Purpose.

This petition is brought to seek a minor change in a provision of Subpart O ("Testing of Intermediate Bulk Containers") contained in Title 49, Subtitle B, Chapter I of the Code of Federal Regulations. Section 178.801(e) currently requires that that design requalification testing must be conducted on each qualified intermediate bulk container design type "at least once every 12 months." We request that the regulation be amended (with respect to FIBCs) to require such testing "at least once every 36 months." The purpose of the proposed action is to eliminate unnecessary testing expenses that create a disincentive to have FIBC designs tested and qualified under U.S. Department of Transportation regulations.

2. Text of Proposed Amendment.

The last sentence of § 178.801(e) currently reads: "Design requalification tests must be conducted at least once every 12 months." We request that the sentence be amended to read: "Design requalification tests must be conducted at least once every 36 months upon FIBCs, and at least once every 12 months upon all other intermediate bulk containers."

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3. Petitioner's Interest in the Proposed Amendment.

The Flexible Intermediate Bulk Container Association ("FIBCA") is an association of companies that either (a) manufacture flexible intermediate bulk containers ("FIBCs"); (b) manufacture component parts for FIBCs in the United States, Canada or Mexico; or (c) import FIBCs into the United States. FIBCA currently has in excess of 50 members. Additional information concerning FIBCA can be found at www.fibca.com. Petitioner seeks the amendment because it would eliminate unnecessary testing expenses and remove a disincentive to have FIBC designs tested and qualified under U.S. Department of Transportation regulations.

4. Information and Arguments that Support the Proposed Action.

Once an FIBC design is qualified, and if both the design and materials used in the construction of the FIBC remain constant, there is little point in requiring annual retesting of the same design. By regulation, IBCs used in the transportation of hazardous materials are required to meet a substantial margin of safety. In the case of FIBCs, a safe working load of 6 X 1 is required. Section 178.812(b)(2). Furthermore, we believe that data maintained by the Department of Transportation shows a low number of incidents connected with the use of FIBCs in the transportation of hazardous materials.

Annual retesting of each FIBC design is expensive. A design requalification test costs approximately \$1,200. This expense becomes particularly burdensome in connection with FIBCs that are manufactured for a particular purpose in limited numbers. For example, if only 100 FIBCs of a particular design are manufactured each year, the design requalification testing costs amount to \$12/bag.

Other countries do not require annual retesting. Canada requires review of the relevant documentation, but not design retesting, every three years. CGSB-43.146. The European Union countries and Mexico have no design retesting requirement. The discrepancy between the U.S. and foreign design retesting requirements creates a disincentive for FIBC importers to have FIBC designs qualified under U.S. regulations. Allowing FIBC designs to be requalified every three years would diminish this disincentive and should actually increase overall safety, as U.S. design qualification requirements include as many or more individual tests than any other country.

II. Section 106.31(c) Criteria

We do not believe that the potential impact of the proposed action is substantial, and therefore do not respond to the § 106.31(c) criteria at this time.

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The Flexible Intermediate Bulk Container Association greatly appreciates your consideration of this petition. If possible, we request a response in time for our May, 2002 annual general meeting. If you have any questions or need any additional information, please feel free to contact me.

Very truly yours,

WILDMAN, HARROLD, ALLEN & DIXON

A handwritten signature in black ink, appearing to read 'R. John Street', written over the printed name.

R. John Street

RJS/dt

cc: Bruce Cuthbertson
FIBCA Executive Director